

APPLICANTS:
Heaps Family LLC and
A T & T New Cingular Wireless PCS, LLC

BEFORE THE
ZONING HEARING EXAMINER

REQUEST: Special Exception to locate a
communications tower in the Agricultural
District

FOR HARFORD COUNTY
BOARD OF APPEALS

HEARING DATE: May 27, 2009

Case No. 5689

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Heaps Family LLC

CO-APPLICANT: AT & T New Cingular Wireless PCS, LLC

LOCATION: 3624 Scarboro Road, Street
Tax Map: 19 / Grid: 2A / Parcel: 315
Fifth (5th) Election District

ZONING: AG / Agricultural District

REQUEST: Special exception, pursuant to Section 267-95C of the Harford County Code, to allow a communications tower in the AG/ Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The subject property is 130 acre, agriculturally zoned, working farm located north of MD Route 440 in the Street area of Harford County.

The parcel is currently improved by a single-family dwelling and various accessory structures, including silos, barns and pole buildings. A substantial portion of the property hosts well-developed woodlands.

The Applicant proposes to construct a 128 foot telecommunications tower close to the existing improvements and at a location which is at roughly the highest point of the property. The telecommunications tower will be a monopole, designed to look like a pine tree to be placed in close proximity to the existing woodlands.

Case No. 5689 – Heaps Family LLC and AT & T New Cingular Wireless PCS

For the Applicant first testified Linda Liebermann¹, who identified herself as site acquisition manager for Co-Applicant AT & T. Her job responsibilities include identification of new sites for cellular transmission towers and co-location issues. She locates possible sites for cellular transmission towers, and works through zoning and other land use issues associated with the permitting process. The carrier is required by its Federal Transmission License to fill coverage gaps. The proposed monopole tower is intended to fill a coverage gap. Ms. Liebermann is familiar with the proposed Scarborough Road site.

A series of plans, including topography, construction drawings and grading plans were introduced into evidence. Ms. Liebermann testified that these plans are accurate descriptions of the area, the site and proposed work.

In performing her site acquisition functions Ms. Liebermann relies upon a ‘search ring’ identified by project engineers. A “search ring” is the identified area in which a tower can be located in order to meet transmission objectives within the gap area. The identified search ring is then used by site acquisition personnel to find potential sites.

First of all, Ms. Liebermann identifies co-location possibilities within the search ring. These are existing structures on which the Applicant’s antennas can be located within a proposed search ring for the gap area as exists in the Scarborough/Whiteford Road area. Ms. Liebermann, however, could find no co-location opportunities. An existing silo was located which could be considered a co-location possibility. However, Ms. Liebermann determined that the structure could not support the necessary AT & T antenna as the structure was not tall enough. The resulting coverage would be insufficient to fill the gap. No other existing structures were located which presented co-location opportunities.

Being unable to identify co-location opportunities, Ms. Liebermann then began her search for potential properties to support the tower in a location that would fit both zoning requirements and landlords’ needs. After a likely property is located, balloon tests are then conducted to determine the visual impact of the proposed tower. This test requires the balloon to be raised 280 feet with photographs then taken at various locations around the site. AT & T tries to minimize visual impacts on the surrounding residential properties, and for this reason the balloon tests are utilized.

Ms. Liebermann also testified that the visual impact of the proposed monopole can be minimized by the use of a “tree pole” design, which is the monopole camouflaged to appear as a pine tree. The proposal for the subject property is a tree pole.

¹ Counsel for the Applicants proffered the majority of witnesses’ testimony.

Case No. 5689 – Heaps Family LLC and AT & T New Cingular Wireless PCS

The witness testified that the proposed monopole is designed to hold the antennas of three carriers. Furthermore, as required by FCC regulations, a Phase I Environmental Assessment was conducted. The Assessment was offered into evidence as “Exhibit No. 3”, along with the Phase I Environmental Site Report as “Exhibit No. 4.” The findings of the Environmental Assessment were satisfactory.

The next witness to testify was Jeffrey Dolan, an A T & T contractual acquisition specialist. Mr. Dolan scouted the area of the proposed coverage gap and located potential sites for the tower. He worked with Ms. Liebermann in this endeavor. Mr. Dolan made the initial contact with the owners of the property and conducted initial negotiations with them. Mr. Dolan negotiated the terms of the lease agreement with the Heaps Family LLC. The lease, which was offered into evidence, is conditioned upon receipt of the requested special exception.

The subject property is encumbered by a Maryland Agricultural Land Preservation Foundation easement which generally prohibits the type of commercial use proposed by the Applicants. However, the Foundation has approved the termination of the easement on 1.6 acres, which is the proposed location of the monopole. The agreement terminating this easement will be recorded if the requested special exception is granted, and the Applicants consent to the recordation being a condition of approval.

Next for the Applicant testified Mustaque Mohamed, who identified himself as a radio frequency engineer employed by LLC International, Inc., a radio frequency design company employed as a consultant with AT & T. Mr. Mohamed was accepted as an expert in radio frequency engineering.

Mr. Mohamed testified that he has analyzed dropped calls, 911 calls, and coverage gap reports for the general area of the subject property to determine if existing antennas should be re-aligned, or if a new tower is necessary. Mr. Mohamed developed a search ring of the area in which a theoretical tower may be placed in order to fill a gap in coverage. He also examined the existing silo identified by Ms. Liebermann to see if the antenna located on that structure would be sufficient to fill the coverage gap. He determined, through his analysis, that it would not be satisfactory.

It was through his analysis that Mr. Mohamed determined that existing antennas cannot be re-aligned to fill AT & T’s coverage gap. Existing structures are not adequate to fill the coverage gap. A new antenna would be necessary, one placed at an approximate height of 120 feet on the Applicants’ property. A height of 120 feet is the lowest height which can be utilized in order to offer sufficient coverage. The pole will be designed for co-location by two other carriers.

Case No. 5689 – Heaps Family LLC and AT & T New Cingular Wireless PCS

All equipment associated with the antenna will be constructed in accordance with FCC regulations and will meet all Federal standards governing the emission of radio frequency energy.

Mr. Mohamed explained that the tower will be approximately 128 feet in height and the antennae will be located at the 120 foot level.

Mr. Mohamed had also reviewed the radio frequency report of the engineer employed by Harford County. The Harford County radio frequency engineer found that the AT & T propagation analysis is accepted as accurate. A coverage gap does exist. The identified silo is not acceptable to house AT & T antennae, and the location of the antennae on the monopole proposed will not impact existing emergency frequencies.

Next testified Cabot Goudy, professional engineer. Mr. Goudy is in charge of design of the proposed communications tower and is familiar with the site and the surrounding properties. He confirmed that the tower will be a 128 foot structure, and will be surrounded at its base by a 40 foot by 60 foot equipment compound. The tower is designed for co-location of additional antennae. Mr. Goudy supervised the balloon testing at the property. Various photographs were introduced showing views of the balloon at different locations surrounding the proposed location (Exhibit No. 15). Mr. Goudy had determined that the tower will be most visible from the roads east of the tower site. However, there are only a few scattered homes along Whiteford Road in that area and possibly one or two homes along Scarboro Road which would have a view of the tower. For the most part, the tower is well screened from the northwest and south by existing woodland. From the east, the view is somewhat obstructed by existing improvements on the Heaps Farm. Mr. Goudy believes that the balloon tests show the visual impact of the tower to be minimal.

The equipment compound will have a small warning sign. No other signs will be on the property associated with the tower. Technicians will visit the site approximately once per month. The operation should generate no noise.

Mr. Goudy believes that the use will not be detrimental to the safety or general welfare. No lights will be placed on the tower. Roads will not suffer an increase in traffic, nor will any dangerous road conditions be generated by the use. The tower will be built according to ANSI standards, and Mr. Goudy introduced a letter, accepted as Exhibit No. 17, verifying such.

The proposed tower will be operated according to all applicable standards, including those contained in the Harford County Development Regulations.

Next for the Applicant testified Oakleigh J. Thorne, offered and accepted as a real estate appraiser with experience in analysis of monopole impacts on surrounding properties.

Mr. Thorne opined that the design of the tree pole and its proximity to the woodlands would aid in shielding its presence from surrounding neighbors.

Case No. 5689 – Heaps Family LLC and AT & T New Cingular Wireless PCS

Mr. Thorne is familiar with studies and literature on impacts of telecommunications towers on surrounding neighborhoods. Those studies have found that neither lattice poles or monopoles will adversely impact property values. Furthermore, the poles studied were not tree poles, as is proposed by the Applicant.

In Mr. Thorne's opinion;

“The results of all our studies have been consistent in that we found no discernable negative economic impact due to the presence of these facilities on adjacent properties.”

Mr. Thorne concludes that the specific tree pole proposed for the subject property will not have a negative economic impact on surrounding properties or the general neighborhood.

The Harford County Department of Planning and Zoning recommended approval, with conditions.

No evidence or testimony was presented in opposition.

APPLICABLE LAW:

The Applicant is requesting a special exception to Section 267-95C of the Harford County Code, which states:

“C. *Communications tower shall be allowed by special exception, up to 199-feet, in the RR, R1, R2, VR, VB, B1, B2, and AG District.*”

Section 267-97 provides:

“An Applicant proposing a new communications tower in the RR, R1, R2, VR, VB, B1, B2 or AG Districts shall demonstrate that the request complies with the following conditions:

- A. *The placement of the communications tower, at the proposed location, will not have a material negative impact on the value, use or enjoyment of any adjoining parcel.*
- B. *The applicant has made a diligent attempt to locate the applicant's antenna on an existing tower or non-residential building or structure.*
- C. *The Applicant shall provide the following additional information in support of its application:*

Case No. 5689 – Heaps Family LLC and AT & T New Cingular Wireless PCS

- (1) *Photographs of existing site conditions;*
- (2) *Photographs demonstrating that a balloon test has been conducted, or other evidence depicting the visual impact of the proposed tower within a one mile radius of the tower; and*
- (3) *A map describing the topography of the site and the area within a one-mile radius of the proposed tower.*

Section 267-86 of the Harford County Code defines Purpose as:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of Part 1.”

Section 267-87 of the Harford County Code, General Regulations, states:

- A. *Special exceptions require the approval of the Board in accordance with Section 267-9 (Board of Appeals). The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.*
- B. *A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.*
- C. *Extension of any use or activity permitted as a special exception shall require further Board approval.*
- D. *The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.*
- E. *In the event that the development or use is not commenced within three (3) years from date of final decision, after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”*

Case No. 5689 – Heaps Family LLC and AT & T New Cingular Wireless PCS

Section 267-9I of the Harford County Code, Limitations, Guides and Standards, is also applicable to this request and its pertinent provisions will be discussed in detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants propose a 128 foot monopole, constructed so as to somewhat resemble a pine tree, on the Applicant's 130 acre farm. The monopole will be located on that portion of the farm where the barn, house and other improvements are located, and will be surrounded on three sides by existing, mature woodland.

AT & T has made a persuasive, and uncontradicted, showing that a coverage gap exists in the area of Scarboro and Whiteford Roads. That coverage gap will be filled by the construction of a 128 foot monopole, which is approximately 70 feet shorter than the maximum allowed. AT & T has determined, through its analysis, that with the location of the monopole being at a fairly high elevation compared to surrounding areas, 128 feet is sufficient for its purposes. The monopole will also serve the additional purpose of being available for co-location by two additional communications companies.

As is normal, an equipment compound will be constructed at the base of the pole, having dimensions of about 40 feet by 60 feet. A warning sign will be placed on the equipment compound. No other signs will be present. Traffic will be minimal with technicians visiting perhaps once per month. Since the monopole is less than 200 feet in height, no lighting will be necessary.

The area is not heavily populated. Only a few residents will be able to see the monopole, and then only its top, according to the testimony. Certainly, the intrusion of a monopole, constructed as proposed, located as described, and with the characteristics suggested, will have little impact to its agricultural neighborhood.

Quite clearly, the proposed communications tower will be rather unobtrusive in its rural neighborhood and should not be an impactful visual presence.

The proposal meets the specific requirements of Section 267-95C, as follows:

“C. Communications tower shall be allowed by special exception up to 199-feet, in the R, RR, R1, R2, VR, VB, B1, B2, and AG District.”

The subject parcel is zoned AG Agricultural and the proposed tower is less than 199 feet.

Case No. 5689 – Heaps Family LLC and AT & T New Cingular Wireless PCS

Similarly, the proposed special exception meets the further specific requirements of Section 267-97, as follows:

“An Applicant proposing a new communications tower in the RR, R1, R2, VR, VB, B1, B2 or AG Districts shall demonstrate that the request complies with the following conditions:

- A. *The placement of the communications tower, at the proposed location, will not have a material negative impact on the value, use or enjoyment of any adjoining parcel.*

The Applicant presented uncontradicted testimony, as well as a written report, that the proposed monopole would have no negative impact on property values. No feature of the proposed communications tower was identified, or can be discerned, which will be harmful to the health, safety and welfare of the neighbors, or the values or use of adjoining parcels.

- B. *The applicant has made a diligent attempt to locate the applicant’s antenna on an existing tower or non-residential building or structure.*

An attempt was made to identify existing structures in the coverage area. Only one structure was so identified, a silo, which does not meet the Applicant’s physical requirements.

- C. *The Applicant shall provide the following additional information in support of its application:*

- (1) *Photographs of existing site conditions;*

Photographs have been submitted.

- (2) *Photographs demonstrating that a balloon test has been conducted, or other evidence depicting the visual impact of the proposed tower within a one mile radius of the tower; and*

Photographs have been submitted.

- (3) *A map describing the topography of the site and the area within a one-mile radius of the proposed tower.*

This map has been provided.

Case No. 5689 – Heaps Family LLC and AT & T New Cingular Wireless PCS

The Applicant must also show compliance with Article XI, Telecommunications Facilities, of the Harford County Code. Much of Article XI relates to the actual construction and operation of the tower, including design requirements. The Article also requires that the Applicant demonstrate a radio frequency need for the facility. The Applicant has, in fact, shown such a need by the testimony of his witnesses, who have found no other available location in the search area, and that a gap in coverage exists. The Article also requires that communication towers be structurally designed to accommodate co-location by three or more carriers. This has been shown. The Applicant has further submitted that the structure shall be constructed to comply with all applicable requirements.

Compliance with additional conditions of Article XI which relate to future operation are within the monitoring responsibilities of the Harford County Department of Planning and Zoning.

The Applicant must also show compliance with the more generalized requirements of Harford County Code Section 267-9I, Limitations, Guides and Standards. The Applicant has shown compliance with these requirements, as follows:

- (1) *The number of persons living or working in the immediate area.*

Few residences lie within sight of the proposed tower. According to the Staff Report, less than 10 residents are within 2,000 feet of the proposed tower. The area is rural residential, and people working or living in the area should not be impacted by the proposed use.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The Staff Report suggests, and the evidence presented at the hearing confirms, that the tower will have no impact on traffic in the area. A visit by a technician once a month will cause no visible change to traffic patterns in the area.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

Telecommunications towers are a fact, if not a necessity, of everyday life. The proposed monopole will close an existing gap in coverage in this rural area of Harford County. At the same time, two additional carriers will be able to co-locate on the tower. Accordingly, it will contribute to the orderly and natural growth of both the community and neighborhood. Fiscal impact should be positive.

Case No. 5689 – Heaps Family LLC and AT & T New Cingular Wireless PCS

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

No such impacts should be generated by the tower.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

Harford County Sheriff's Department and the Maryland State Police will provide police protection. The local volunteer fire company will provide fire protection. Water and sewer facilities will not be utilized.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

It is found that the proposed tower will comply with all Building Code requirements concerning construction, operation and maintenance. Testimony was given and accepted that all FCC requirements will be met. The tower is allowed as a special exception in this zoning district.

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

Two churches and Harford Christian School are located east of the site. No evidence has been presented that the use will have any potential adverse impact.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The use is compatible with those purposes.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

The subject property does contain a stream with associated wetlands. There is no evidence of any potential impact on those sensitive environmental features.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Case No. 5689 – Heaps Family LLC and AT & T New Cingular Wireless PCS

Furthermore, there is no evidence or, indeed, even a suggestion that the proposed “tree pole” at the proposed site would have a greater impact as proposed than it would if located somewhere else within the district. In fact, it appears that the proposed site contains mature woodlands and is somewhat removed from adjoining residences and roads. Being within a rural agricultural area, the proposed location is a good, if not ideal, site and is surely better than most possible sites within the district. The adverse impact of the proposed use should be minimal.

CONCLUSION:

Accordingly, it is recommended that the requested special exception be granted, subject to the following conditions:

1. A site plan shall be submitted for review and approval through the Development Advisory Committee (DAC).
2. The partial district termination document shall be recorded in the Harford County Land Records prior to the Building Permit application for the proposed tree pole. Verification that the document has been recorded in the Land Records shall be provided to the Department of Planning and Zoning prior to, or at the time of, Building Permit application.
3. The Applicants shall obtain all necessary permits and inspections for the proposed facility.
4. The Applicants shall construct the facility in compliance with the Applicants’ site plan.

Date: September 1, 2009

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on October 1, 2009.